

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Maria Finkelstein, et al.,

Court File No. 15-cv-4149 (WMW/LIB)

Plaintiffs,

v.

REPORT AND RECOMMENDATION

FDIC, et al.,

Defendants.

This matter comes before the undersigned United States Magistrate Judge upon the routine supervision of the cases that pend before the Court, pursuant to a general assignment made in accordance with the provisions of 28 U.S.C. § 636.

Plaintiffs commenced the present action on November 17, 2015. (Compl. [Docket No. 1]). More than 120 days after Plaintiffs filed their Complaint, Plaintiffs had not provided proof of service of a summons and Complaint on Defendant FDIC or Defendant Bank of New York Melin Trust Company, N.A. (“Defendant Bank of New York”). Accordingly, on March 30, 2016, the Court issued an Order notifying Plaintiffs that the Federal Rules of Civil Procedure in effect at the time that Plaintiffs initiated the present action required plaintiffs to demonstrate proof of service “within 120 days after the complaint is filed, [or] the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m) (amended December 1, 2015). Pursuant to Rule 4(m), the Court directed Plaintiff to—within twenty (20) days—provide proof of service or demonstrate good cause for an extension of time to serve Defendants, failing which the Court would recommend dismissal for failure to effect proper service and failure to prosecute. (Order [Docket No. 5]).

Twenty (20) days have passed since the date of that Order, and Plaintiffs have neither provided proof of service nor articulated good cause as to why the Court should grant them an extension of time to do so. Therefore, pursuant to Rule 4(m), **IT IS HEREBY RECOMMENDED** that Plaintiffs' Complaint, [Docket No. 1], be **DISMISSED without prejudice**, for failure to effect service and for lack of prosecution, unless Plaintiff, within the 14-day period to object to this Report and Recommendation, provides proof of service or demonstrates good cause for an extension of time to serve Defendant. See Widtfeldt v. Daugherty, 587 F. App'x 992 (8th Cir. 2014) (holding that the district court did not abuse its discretion in dismissing the action without prejudice when plaintiff failed to establish that he had properly effected service within 120 days after filing his complaint).

Dated: April 26, 2016

s/Leo I. Brisbois
Leo I. Brisbois
U.S. MAGISTRATE JUDGE

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "A party may file and serve specific written objections to a magistrate judge's proposed findings and recommendation within 14 days after being served with a copy of the recommended disposition[.]" A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.